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November 9, 2016

VIA CM/ECF

Honorable Frederic Block
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: Wexler v. AT&T Corp., No. 15-cv-686 (FB-PK)

Dear Judge Block:

This letter serves as a response to Defendant's October 28, 2016 letter requesting a pre-motion conference.

Plaintiff anticipates filing a Notice of Substitution of Counsel within the next week, wherein Mr. Shimshon Wexler will be withdrawing as counsel for Plaintiff, a new firm will be joining the case. Pursuant to the new agreement, Mr. Wexler will not be entitled to any share of any attorney fees recovered in this case, but may seek to petition the Court for quantum meruit only for the work done prior to his withdrawal, but in no event will any settlement or resolution have any relationship or be contingent upon any such fees.

Further, as noted in Plaintiff's September 27, 2016 letter, Plaintiff disagrees with the request for a pre-motion conference because it is premature for the reasons set forth in *Bank v. Am. Home Shield Corp.*, No. 10-CV-4014, 2013 WL 789203 (E.D.N.Y. Mar. 4, 2013).

This case is not at the class certification stage. Plaintiff has not filed a motion to certify the class and therefore we are not at the stage of appointing Dr. Wexler as a representative of the class. *Banks*, 2013 WL 789203 at *2. See *Gibson v. Chrysler Corp.*, 261 F.3d 927, 927 (9th Cir. 2001) ("A class action complaint is filed only by a named plaintiff or plaintiffs. Although such an action is often referred to as a class action when it is filed, it is, at the time of filing, only a would-be class action. It does not become a class action until certified by the district court."). Only at the class certification inquiry, and not before, should the adequacy of a proposed class representative be evaluated. *Banks*, 2013 WL 789203 at *3.

For the reasons stated above, Plaintiff requests that the Court deny Defendant's request for a pre-motion conference.

Respectfully submitted,

James S. Giardina
Counsel for Plaintiff